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10 **UNITED STATES DISTRICT COURT**

11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 STACIA CULLORS, an individual; L.P., a minor, N.B., a minor, and V.B., a minor, through their guardian ad litem STACIA CULLORS; ANTHONY BACANI, an individual; D.B., a minor and E.B., a minor, through their guardian ad litem ANTHONY BACANI; JENNIFER CULLORS, an individual; A.C., a minor, and J.C., a minor, through their guardian ad litem JENNIFER CULLORS, and on behalf of all others similarly situated,

13 Plaintiffs,

14 vs.

15 BEECH-NUT NUTRITION COMPANY; NURTURE, INC.; PLUM, INC. d.b.a. PLUM ORGANICS; GERBER PRODUCTS COMPANY; WALMART, INC.; SPROUT FOODS, INC.; and DOES 1 through 20 inclusive,

16 Defendants.

17 ) Case No.: 2:22-cv-02324 RGK (Ex)

18 ) **SECOND AMENDED COMPLAINT  
FOR DAMAGES**

19 ) **(1) FRAUDULENT CONCEALMENT**

20 ) **(2) NEGLIGENT**

21 ) **MISREPRESENTATION**

22 ) **(3) VIOLATIONS OF THE BUSINESS &  
PROFESSIONS CODE SECTIONS 17200  
ET SEQ. (“UCL”)**

23 ) **(4) VIOLATION OF CALIFORNIA  
CONSUMER LEGAL REMEDIES ACT,  
CAL. CIV. CODE SECTION 1770, *et seq.*  
("CLRA")**

24 ) **(5) UNJUST ENRICHMENT**

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1 COME NOW Plaintiffs STACIA CULLORS, an individual, L.P., a minor, N.B., a minor,  
 2 and V.B., a minor, through their guardian ad litem STACIA CULLORS, ANTHONY BACANI,  
 3 an individual, D.B., a minor, and E.B., a minor, through their guardian ad litem ANTHONY  
 4 BACANI, JENNIFER CULLORS, an individual, as well as A.C., a minor, and J.C., a minor  
 5 through their guardian ad litem JENNIFER CULLORS, and on behalf of all others similarly  
 6 situated (collectively “Plaintiffs”), and through their counsel of record, Beverly Hills Trial  
 7 Attorneys, P.C., file this class action complaint against BEECH-NUT NUTRITION COMPANY  
 8 (“BEECH-NUT”), NURTURE, INC. (“NURTURE”), PLUM, INC. d.b.a. PLUM ORGANICS  
 9 (“PLUM”), GERBER PRODUCTS COMPANY (“GERBER”), WALMART, INC.  
 10 (“WALMART”), SPROUT FOODS, INC. (“SPROUT”), and DOES 1 through 20, inclusive  
 11 (collectively “Defendants”), seeking damages and relief on behalf of themselves and for all others  
 12 similarly situated for: fraudulent concealment, negligent misrepresentation, violation of  
 13 California’s Unfair Competition Law - *Business & Professions Code* sections 17200, *et seq.*  
 14 (“UCL”), California’s Consumer Legal Remedies Act - *Civil Code* sections 1750, *et seq.*  
 15 (“CLRA”), unjust enrichment, and related claims as stated herein as below. Unless explicitly  
 16 stated to the contrary, all allegations are based upon information and belief.

### INTRODUCTION

17 This case involves a series of manufacturers, BEECH-NUT NUTRITION COMPANY  
 18 (“Beech-Nut”), NURTURE, INC. (“Nurture”), PLUM, INC. d.b.a. PLUM ORGANICS  
 19 (“Plum”), GERBER PRODUCTS COMPANY (“Gerber”), WALMART, INC. (“Walmart”), and  
 20 SPROUT FOODS, INC. (“Sprout”) (collectively referred to as “Defendants”) that knowingly sold  
 21 baby food products (“Baby Foods”) which contain high levels of toxic heavy metals including  
 22 mercury, lead, arsenic and cadmium to Plaintiffs.

23 Plaintiffs are consumers who purchased Defendants’ Baby Foods reasonably believing that  
 24 such baby foods are safe, nutritious, and free from harmful toxins contaminants and chemicals.

25 In reality, and despite Defendants’ promises and reassurances to parents that their products  
 26 are pure, natural, safe and healthy, these Baby Foods contain heavy metals that are not pure, are  
 27 unnatural, are unsafe, and pose a major risk to babies and infants. Had parents and/or guardians  
 28

1 been fully informed about the contents of the Baby Foods they purchased, they would not have  
 2 bought these Baby Foods nor fed them to their children.

3       In February 2021, the U.S. House of Representatives’ Subcommittee on Economic and  
 4 Consumer Policy, Committee on Oversight and Reform released a report (“Report”) containing  
 5 outrageous details of Defendants’ tainted Baby Foods based on the submission of internal test  
 6 results and company documents. Through this report, it came to light that Defendants’ Baby  
 7 Foods are laced with shocking amounts of toxic heavy metals. Specifically, the Subcommittee  
 8 found that Defendants sell Baby Foods containing as much as 180 parts per billion (“ppb”)<sup>1</sup>  
 9 inorganic arsenic, 6441 ppb lead, 10 ppb mercury, and manufacture their Baby Foods using  
 10 ingredients containing as much as 913.4 ppb arsenic, 886.9 ppb lead, and 344.55 ppb cadmium,  
 11 far beyond the regulatory standards.

12       These numbers are outrageous given that in comparison, the U.S. Food and Drug  
 13 Administration (“FDA”) has set the maximum allowable levels in bottled water at 10 ppb  
 14 inorganic arsenic, 5 ppb lead and 5 ppb cadmium, and the U.S. Environmental Protection Agency  
 15 (“EPA”) has capped the allowable level of mercury in drinking water at 2 ppb. The Report held  
 16 that the test results of Baby Foods and their ingredients “eclipse those levels: including results up  
 17 to **91 times** the arsenic level, up to **177 times** the lead level, up to **69 times** the cadmium level,  
 18 and up to **5 times** the mercury level.”<sup>2</sup>

19       The House Staff Report highlighted the high levels of high toxic metals in numerous baby  
 20 foods produced by Defendants, namely Defendants Beech-Nut, Nurture and Gerber who  
 21 cooperated with Congress’s investigation. Defendants Plum, Walmart and Sprout refused  
 22 cooperation with the Subcommittee which was highly suggestive of their misconduct given their  
 23 choice not to cooperate with federal regulators.<sup>3</sup>

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24  
 25  
 26 <sup>1</sup> Ppb (or ppbm) is used to measure the concentration of a contaminant in soils, sediments, and water. 1  
 27 ppb equals 1 microgram of substance per kg of solid.

28 <sup>2</sup> Staff Report, Subcommittee on Economic and Consumer Policy Committee on Oversight and Reform  
 U.S. House of Representatives, *Baby Foods are Tainted with Dangerous Levels of Arsenic, Lead,  
 Cadmium and Mercury* (Feb. 4, 2021) (“Subcommittee Report”) at 4 (attached as Exhibit “A”).

<sup>3</sup> *Id.* at 2.

1 Furthermore, in the Report, the Subcommittee concluded that “[m]anufacturers knowingly  
2 sell these products to unsuspecting parents, in spite of internal company standards and test results,  
3 and without any warning labeling whatsoever.”<sup>4</sup> Additionally, the Report held that exposure to  
4 toxic heavy metals causes:

5 a) permanent decreases in IQ  
6 b) diminished future economic productivity  
7 c) increased risk of future criminal and antisocial behavior in children.  
8 d) affected and endanger infant neurological development and long-term brain  
9 function.  
10 e) and other unknown and harmful effects to children.<sup>5</sup>

11 Defendants knew or should have known that their Baby Foods contain significant levels of  
12 toxic heavy metals, including arsenic, lead, cadmium, and mercury. Defendants knew or should  
13 have known that such toxic metals are not fit for consumption, and knew or should have known  
14 that its Baby Foods are detrimental to the health of babies. In fact, Defendants had no reasonable  
15 ground for believing that their Baby Foods were free from toxic heavy metals, or that such toxic  
16 metals were appropriate for sale in Baby Foods.

17 The high levels of toxic heavy metals found in Defendants’ Baby Foods are as a result of  
18 the ingredients used by Defendants to manufacture these Baby Foods, disregard of regulatory  
19 standards, and corporate policies which failed to test finished products before they were  
20 distributed into the market, and the setting of dangerously inflated internal limits which  
21 Defendants easily ignored, leading to the purchase of parents and/or guardians of these products  
22 and eventually consumption by vulnerable children.

23 Defendants continue to wrongfully induce consumers to purchase its Baby Foods that are  
24 not as advertised. Plaintiffs are unable to purchase Baby Foods from any of the Defendants with  
25

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26  
27  
28 <sup>4</sup> *Id.* at 59.

<sup>5</sup> *Id.* at 2.

1 any degree of certainty that these foods will not contain toxic heavy metals or other  
2 undesirable toxins or contaminants.

3 Plaintiffs brings this proposed consumer class action individually and on behalf of all other  
4 members of the Class, who, from the applicable limitations period up to and including the  
5 present, purchased for use any of Defendants' tainted Baby Foods.

6 As a result of Defendants' negligent, reckless, and/or knowingly deceptive conduct as  
7 alleged herein, Plaintiffs were injured when they paid the purchase price or a price premium  
8 for baby foods that did not deliver what they promised. They paid the purchase price on the  
9 assumption that the labeling of the baby foods was accurate and that it was free of toxic heavy  
10 metals and safe to ingest. Plaintiffs would not have paid this money or fed their children food  
11 containing toxic heavy metals had they known the truth that Defendants' products contain  
12 excessive degrees of toxic heavy metals.  
13

14 **PARTIES**

15 **PLAINTIFFS**

16 1. Plaintiffs are, and at all times relevant here, have been citizens of the state of  
17 California. Additionally, unnamed Class Plaintiffs, are, and at all times relevant herein, were  
18 residents of the State of California.

19 2. In making their purchasing decisions, Plaintiffs Stacia Cullors, Anthony Bacani  
20 and Jennifer Cullors consider how healthy baby food products are, including the ingredients and  
21 nutritional value of those products. In fact, these baby foods by the various Defendants' brands,  
22 which were more expensive than cheaper alternatives, were purchased because Plaintiffs Stacia  
23 Cullors, Anthony Bacani and Jennifer Cullors were led to believe that the Baby Foods from these  
24 brands were healthier and safer for consumption by the remaining Plaintiffs.

25 3. On numerous occasions, Plaintiffs Stacia Cullors, Anthony Bacani and Jennifer  
26 Cullors have purchased the Baby Foods from various stores including Target, Walmart,  
27 Albertsons and Walgreens. Specifically, Plaintiff Stacia Cullors purchased hundreds of different  
28 varieties of Defendants' baby food products in California from September 2009 to May 2012, and

1 again from February 2020 to December 2021; Plaintiff Anthony Bacani purchased hundreds of  
 2 different varieties of Defendants' baby food products in California from March 2011 to November  
 3 2014 and again from May 2016 to January 2019; and Plaintiff Jennifer Cullors purchased  
 4 hundreds of different varieties of Defendants' baby food products in California from January 2011  
 5 to September 2013, and again from February 2020 to December 2021.

6       4. Minor Plaintiffs L.P., N.B., V.B., D.B., E.B., A.C., and J.C., were exposed to and  
 7 consumed the below-mentioned Baby Foods over hundreds of times during a span of several  
 8 years. Specifically, Plaintiff L.P. was exposed to and consumed these Baby Foods over 100 times  
 9 between September 2009 to May 2012; Plaintiff N.B. was exposed to and consumed these Baby  
 10 Foods over 100 times between February 2020 to December 2021; Plaintiff V.B. was exposed to  
 11 and consumed these Baby Foods over 50 times between September 2021 to December 2021;  
 12 Plaintiff D.B. was exposed to and consumed these Baby Foods over 100 times between March  
 13 2011 to November 2014; Plaintiff E.B. was exposed to and consumed these Baby Foods over 100  
 14 times between May 2016 to January 2019; Plaintiff A.C. was exposed to and consumed these  
 15 Baby Foods over 100 times between January 2011 to September 2013; and Plaintiff J.C. was  
 16 exposed to and consumed these Baby Foods over 100 times between February 2020 to December  
 17 2021.

18       5. The Baby Foods purchased and consumed by Plaintiffs from Beech-Nut during  
 19 the above-mentioned time periods were the following:

- 20       • Beech-Nut Rice Cereal (recalled on June 8, 2021)
- 21       • Rice Single Grain Baby Cereal
- 22       • Oatmeal Whole Grain Baby Cereal
- 23       • Classics Sweet Carrots – Stage 2
- 24       • Organics Just Carrots – Stage 1
- 25       • Naturals Just Sweet Potatoes – Stage 1
- 26       • Classics Sweet Potatoes – Stage 2
- 27       • Classics Sweet Peas – Stage 2
- 28       • Beechnut Naturals just Butternut Squash – Stage 1
- Organic Just Apples
- Naturals Bananas – Stage 1
- Naturals Beets, Pear & Pomegranate
- Classics mixed vegetables – Stage 2
- Classics Chicken & Chicken Broth

- 1     • Classics Turkey and Turkey Broth
- 2     • Breakfast on the go Yogurt, Banana and Mixed Berry Blend

3                 6. The Baby Foods purchased and consumed by Plaintiffs from Nurture,  
4 which sells Baby Foods under the brand name HappyBABY, during the above-mentioned time  
5 periods were the following:

- 6     • Oats & Quinoa Baby Cereal Organic Whole Grains with Iron – Sitting Baby
- 7     • Oatmeal Baby Cereal, clearly crafted – Organic Whole Grains for Sitting baby
- 8     • Sweet Potatoes – Stage 1
- 9     • Organic Pears – Stage 1
- 10    • Clearly Crafted Prunes Organic Baby Food
- 11    • Simple Combos Apples, Spinach & Kale
- 12    • Superfood Puffs – Apple & Broccoli Organic Grain Snack
- 13    • Superfood Puffs Organic Grain Snack – Sweet Potato & Carrot
- 14    • Organic Teethers Blueberry & Purple Carrot – Sitting
- 15    • Apples, Sweet Potatoes & Granola Clearly Crafted Organic Baby food
- 16    • Organic Rice Cakes Puffed Rice Snack

17                 7. The Baby Foods purchased and consumed by Plaintiffs from Plum, during the  
18 above-mentioned time periods were the following:

- 19    • Just Sweet Potato Organic Baby Food – 1, 4 months and up
- 20    • Just Peaches – organic baby food – for 4+ months (stage 1)
- 21    • Just Prunes Organic Baby Food – 1, 4 months & up
- 22    • Little Teethers Organic Multigrain Teething Wafers – Banana with Pumpkin – Baby  
23    Crawler

24                 8. The Baby Foods purchased and consumed by Plaintiffs from Gerber, during the  
25 above-mentioned time periods were the following:

- 26    • Banana – Sitter 2<sup>nd</sup> Foods
- 27    • Peach – Sitter 2<sup>nd</sup> Foods
- 28    • Pear – Sitter 2<sup>nd</sup> Foods
- Organic Mango Apple Carrot Kale – Sitter 2<sup>nd</sup> food
- Carrot Pear Blackberry – Sitter 2<sup>nd</sup> Foods
- Organic Apple Blueberry Spinach – Sitter 2<sup>nd</sup> Food
- Apple Sweet Potato with Cinnamon – Toddler 12+ months
- Carrot Sweet Potato Pea – Sitter 2<sup>nd</sup> Foods
- Apple Juice from Concentrate – Toddler 12+ months

- 1     • Apple Prune Juice from Concentrate – Toddler 12+ months
- 2     • Variety Pack Juices from Concentrate – White Grape
- 3     • Pear Juice from Concentrate 100% Juice – Toddler 12+ months
- 4     • Mashed Potatoes & Gravy with Roasted Chicken and a side of carrots – toddler
- 5     • Chicken Rice dinner – Sitter 2<sup>nd</sup> Foods
- 6     • Turkey Rice Dinner – Sitter 2<sup>nd</sup> Foods
- 7     • Beef and Gravy 2<sup>nd</sup> foods
- 8     • Ham and Gravy 2<sup>nd</sup> foods
- 9     • Puffs Banana Cereal Snack – Crawler 8+ months
- 10    • Teether Wheels – Apple Harvest – Crawlers
- 11    • Yogurt Blends Strawberry Snack – Crawler 8+ months
- 12    • Arrowroot Biscuits – crawler 10+ months
- 13    • Rice Single Grain Cereal
- 14    • Multigrain Cereal – Sitter 2<sup>nd</sup> Foods
- 15    • Oatmeal Single Grain Cereal
- 16    • Carrot – Sitter 2<sup>nd</sup> food
- 17    • Carrot – Supported Sitter 1<sup>st</sup> Foods
- 18    • Sweet Potato Supported Sitter 1<sup>st</sup> Foods Tub
- 19    • Sweet Potato – Sitter 2<sup>nd</sup> food
- 20    • Sweet Potato – Supported Sitter 1<sup>st</sup> Foods
- 21    • Pea – Sitter 2<sup>nd</sup> Foods
- 22    • Green Bean – Sitter 2<sup>nd</sup> Food

16       9.     The Baby Foods purchased and consumed by Plaintiffs from Walmart,  
17     under the brand name Parent's Choice, during the above-mentioned time periods were the  
18     following:

- 19     • Parent's Choice Stage 2 (6+ months) Carrot
- 20     • Parent's Choice Stage 1 (4-6 months) Sweet Potato
- 21     • Parent's Choice Stage 2 (6+ months) Organic Butternut Squash Vegetable Puree
- 22     • Parent's Choice Stage 3 (9+ months) Little Hearts Strawberry Yogurt Cereal
- 23     • Parent's Choice Rice Baby Cereal (recalled in October 2021)

24       10.    The Baby Foods purchased and consumed by Plaintiffs from Sprout during  
25     the above-mentioned time periods were the following:

- 26     • Prunes Organic Baby Food
- 27     • Carrot Apple Mango Organic Baby Food
- 28     • Butternut Chickpea Quinoa & Dates Organic Baby Food
- 29     • Organic Quinoa Puffs Baby Cereal Snack – Apple & Kale

1        11. All of these products were purchased and consumed by Plaintiffs because they  
2 believed these products were healthy Baby Foods based on the labeling on the products and the  
3 advertisements by Defendants which promoted these Baby Foods as organic and nutritious. At no  
4 time during their purchase and consumption were Plaintiffs aware that Defendants' claims with  
5 regards to the Baby Foods were false and misleading, and that these products actually contained  
6 high levels of heavy metals, chemicals or toxins.

7        12. Plaintiffs would not have purchased these Baby Foods, at times paying premium  
8 prices, nor would have consumed these products if they were aware of the presence of the alleged  
9 heavy metals, chemicals, and toxins. Plaintiffs would be willing to purchase the Baby Foods in  
10 the future if Plaintiffs could be certain that they do not contain, or do not have a risk of containing,  
11 heavy metals, chemicals or toxins.

## **DEFENDANTS**

13        13. Defendant Beech-Nut Nutrition Company ("Beech-Nut") is a citizen of  
14 Delaware and New York with its principal place of business located at 1 Nutritious Pl.,  
15 Amsterdam, NY 12010. Beech-Nut sells Baby Foods under the brand name Beech-Nut. Beech-  
16 Nut produces Baby Foods aimed at infants 4+ months up to 12+ months and includes a variety of  
17 cereals, "jars", and "pouches" for these age groups. At all relevant times, Beech-Nut has  
18 conducted business and derived substantial revenue from its manufacturing, advertising,  
19 distributing, selling, and marketing of Baby Foods within the State of California and Los Angeles  
20 County.

21        14. Defendant Nurture, Inc. ("Nurture"), is a citizen of Delaware and New York  
22 with its principal place of business located at 40 Fulton St, 17th Floor, New York, NY 10038-  
23 1850. Nurture owns Happy Family Brands (including Happy Family Organics) and sells Baby  
24 Foods under the brand name HappyBABY. Nurture classifies its HappyBABY range of products  
25 according to three categories: "baby", "tot", and "mama". The "baby" category is comprised of  
26 foods, including "starting solids", intended for age groups 0-7+ months, the "tot" category covers  
27 12+ months, and "mama" includes infant formulas for newborn babies. At all relevant times,  
28 Nurture has conducted business and derived substantial revenue from its manufacturing,

1 advertising, distributing, selling, and marketing of HappyBABY within the State of California  
2 and Los Angeles County. At all times material hereto, Defendants, and each of them, engaged in  
3 their unfair and deceptive billing practices within the jurisdiction of this Court.

4 15. Defendant PLUM, INC. d.b.a. PLUM ORGANICS is a citizen of Delaware  
5 and California with its principal place of business located at 1485 Park A venue, Emeryville,  
6 California 94608. Plum sells Baby Foods under the brand name Plum Organics. Plum's products  
7 are divided into groups according to the targeted infant or toddler age and/or type of food product.  
8 For example, there are five groups designated for the youngest infants: Stage 1 (4+ months old),  
9 Stage 2 (6+ months old), Stage 3 (6+ months old), "Super Puffs", and "Little Teethers". At all  
10 relevant times, Plum has conducted business and derived substantial revenue from its  
11 manufacturing, advertising, distributing, selling, and marketing of Baby Foods within the State  
12 of California and Los Angeles County.  
13

14 16. Defendant Gerber Products Company ("Gerber") is a citizen of Michigan  
15 with its principal place of business located at 445 State Street, Fremont, MI 49413-0001. Gerber  
16 sells Baby Foods under the brand name Gerber. Gerber organizes its products into broad  
17 categories of "formula", "baby cereal", "baby food", "snacks", "meals & sides" "beverages" and  
18 "organic". At all relevant times, Gerber has conducted business and derived substantial revenue  
19 from its manufacturing, advertising, distributing, selling, and marketing of Baby Foods within the  
20 State of California and Los Angeles County.  
21

22 17. Defendant Walmart, Inc. ("Walmart") is a citizen of Delaware and Arkansas  
23 with its principal place of business located at 702 S.W. 8th St. Bentonville, AK 72716. Walmart  
24 sells Baby Foods under the brand name Parent's Choice. Walmart's Parent's Choice offers a wide  
25 selection of baby foods ranging from "sweet potatoes & corn" to "toddler cookies" and "yogurt  
26 bites". At all relevant times, Walmart has conducted business and derived substantial revenue  
27 from its manufacturing, advertising, distributing, selling, and marketing of Baby Foods within the  
28 State of California and Los Angeles County.  
29

30 18. Defendant Sprout Foods, Inc. ("Sprout") is a citizen of Delaware and New

1 Jersey with its principal place of business located at 50 Chestnut Ridge Rd, Montvale, NJ 07645.  
2 Sprout sells Baby Foods under the brand name Sprout Organic Foods. Sprout organizes its Baby  
3 Foods selection according to three categories: Stage 2 (6 months+); Stage 3 (8 months+); and  
4 Toddler. At all relevant times, Sprout has conducted business and derived substantial revenue  
5 from its manufacturing, advertising, distributing, selling, and marketing of Baby Foods within the  
6 State of California and Los Angeles County.

7       19. Plaintiffs are uncertain of the true names and capacities of the Defendants  
8 sued herein as DOES 1 through 20, inclusive, and therefore, sue said Defendants under said  
9 fictitious names. Plaintiffs will amend this complaint further to insert the true names and  
10 capacities of said Defendants when the same are discovered. Plaintiffs are informed and believe  
11 and thereon allege that each of the fictitiously named Defendants are responsible in some manner  
12 for the occurrences herein alleged and are liable to the named Plaintiffs, and all other similarly  
13 situated on the claims hereinafter set forth. Said named Defendants and fictitiously named  
14 Defendants are hereinafter collectively referred to as "Defendants."

15       20. At all times mentioned, all Defendants and each of them, inclusive, were  
16 engaged in the business of researching, developing, designing, licensing, manufacturing,  
17 distributing, selling, marketing, and/or introducing into interstate commerce and into the State of  
18 California, including in Los Angeles County, either directly or indirectly through third parties or  
19 related entities, Baby Foods.

20       21. At relevant times, Defendants and each of them, inclusive, conducted regular  
21 and sustained business and engaged in substantial commerce and business activity in the State of  
22 California, which included but was not limited to selling, marketing and distributing Baby Foods  
23 in the State of California and Los Angeles County.

24       22. At all relevant times, Defendants and each of them, inclusive, expected or  
25 should have expected that their acts would have consequences within the United States of  
26 America including the State of California and including Los Angeles County, said Defendants  
27 derived and derive substantial revenue therefrom.

## **JURISDICTION AND VENUE**

23. This Court has jurisdiction over this action pursuant to the California Constitution.

24. The Court has personal jurisdiction over Defendant Plum because this Defendant is a citizen of the State of California. Additionally, the Court has personal jurisdiction over Beech-Nut, Nurture, Gerber, Walmart, Sprout and Plum as each of these Defendants is authorized and licensed to conduct business in the State of California, maintains and carries on systematic and continuous contacts in the State of California, and conducts business within the State of California, and/or otherwise intentionally avails itself of the California market through its promotion, sales, distribution and marketing within the State to render the exercise of jurisdiction by this Court permissible.

25. Venue is proper in this Court because all Defendants do business in Los Angeles County, and substantial parts of the events giving rise to Plaintiffs' claims occurred in this judicial district.

## **GENERAL ALLEGATIONS**

26. Inorganic arsenic, lead, cadmium, and mercury are toxic heavy metals (the “Toxic Heavy Metals”). The United States Food and Drug Administration (“FDA”) and the World Health Organization (“WHO”) have declared these Toxic Heavy Metals dangerous to human health. Specifically, FDA states that these Toxic Heavy Metals have “no established health benefit,” “lead to illness, impairment, and in high doses, death,” and because of bioaccumulation, “even low levels of harmful metals from individual food sources, can sometimes add up to a level of concern.”<sup>6</sup>

27. The dangerous effects of these toxins are worsened in developing and vulnerable bodies and brains of babies and children, who FDA explains are at the greatest risk of harm. *See* Subcommittee Report, p. 2. Exposure, such as ingestion, of Toxic Heavy Metals by babies and children leads to untreatable and permanent brain damage, resulting in reduced intelligence and behavioral problems. For instance, scientific studies have connected exposure to lead to

<sup>6</sup> FDA, *Metals and Your Food*, available at: <https://www.fda.gov/food/chemicals-metals-pesticides-food/metals-and-your-food>.

1 a substantial decrease in children's total IQ points and their lifetime earning capacity. *See*  
2 Subcommittee Report, p. 9.

3 28. Additionally, Exposure to Toxic Heavy metals (such as arsenic, lead, cadmium,  
4 and mercury) causes permanent decreases in IQ, diminished future economic productivity, and  
5 increased risk of future criminal and antisocial behavior in children, and can endanger infant  
6 neurological development and long-term brain function. *See*, Subcommittee Report, p. 2.

7 29. Because Toxic Heavy Metals have no benefits and severe detriments, Healthy  
8 Babies Bright Futures ("HBBF"), an alliance of nonprofit organizations, scientists, and donors  
9 whose work is cited favorably in the Subcommittee Report, has concluded that baby food  
10 should have no measurable amount of arsenic, lead, cadmium, or mercury. In fact, in October  
11 2019, HBBF published a report investigation the presence of Toxic Heavy Metals in baby foods.<sup>7</sup>  
12 The HBBF Report found that 95% of "baby foods tested were contaminated with one or more of  
13 four toxic heavy metals – arsenic, lead, cadmium and mercury." All but nine of 168 baby foods  
14 tested, contained at least one metal, though most contained more than one.<sup>8</sup> Specifically, the  
15 HBBF report identified "puffs and other snacks made with rice flour," "teething biscuits and rice  
16 rusks," "infant rice cereal," "apple, pear, grape, and other fruit juices," and carrots and sweet  
17 potatoes" manufactured by the Defendants as particularly high in Toxic Heavy Metals.<sup>9</sup> Given  
18 these results, and in response to reports alleging high levels of Toxic Heavy Metals in baby  
19 food sold in the United States, the House Subcommittee launched an investigation into the  
20 presence of Toxic Heavy Metals in certain brands of baby food, including Defendants' baby  
21 food, and the results of the investigation were set forth in the Subcommittee Report, which was  
released on February 4, 2021. Defendants Walmart, Plum, and Sprout refused to cooperate with  
the Subcommittee's investigation.

#### *Arsenic in Defendant's Baby Food*

22 30. According to the Subcommittee Report, arsenic was present in all brands of  
23  
24

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25  
26 7 Healthy Babies Bright Futures, What's in My Baby's Food? A National Investigation Finds 95 Percent  
27 of Baby Foods Tested Contain Toxic Chemicals That Lower Babies' IQ, Including Arsenic and Lead (Oct.  
28 2019) ("HBBF Report") (attached as Exhibit "B").

8 *Id.* at 6.

9 *Id.* at 10-11.

1 Baby food responding to the House Subcommittee's investigation. In particular, Defendant  
 2 Nurture (HappyBABY) sold baby foods after tests showed they contained as much as 180 parts  
 3 per billion (ppb) inorganic arsenic. Over 25% of the products Nurture tested before sale contained  
 4 over 100 ppb inorganic arsenic. Nurture's testing shows that the typical baby food product it sold  
 5 contained 60 ppb inorganic arsenic. Furthermore, Defendant Beech-Nut used ingredients that test  
 6 results showed have as high as 913.4 ppb arsenic. In fact, Beech-Nut routinely used high-arsenic  
 7 additives that tested over 300 ppb arsenic to address product characteristics such as "crumb  
 8 softness." On June 8, 2021, four months following the Congressional findings, Beech-Nut issued  
 9 a voluntary recall of its infant single grain rice cereal and exited the rice cereal market completely,  
 10 confirming that its products exceed regulatory arsenic limits. Additionally, Defendant Gerber  
 11 used high-arsenic ingredients, using 67 batches of rice flour that had tested over 90 ppb inorganic  
 12 arsenic.

13 31. The levels of toxic arsenic in Defendant's baby food far exceeded the 10 ppb  
 14 Limit the FDA has set for arsenic in bottled water that is legal to sell to any consumer, even full-  
 15 grown adults.<sup>10</sup>

16 32. Arsenic is the most dangerous of the Toxic Heavy Metals at issue and poses the  
 17 most significant risk to human health.<sup>11</sup> Currently known risks of arsenic to health include, but  
 18 are not limited to, respiratory, gastrointestinal, neurological and immunological effects, as well  
 19 as damaging effects on the central nervous system and cognitive development in children.<sup>12</sup>

#### ***Lead in Defendant's Baby Food***

20 33. Lead was also present in Defendants' baby food. Specifically, the Subcommittee  
 21 Report found that Defendant Nurture (HappyBABY) sold finished baby food products that tested  
 22 as high as 641 ppb lead, and that almost 20% of the baby food products that Nurture tested  
 23 contained over 10 ppb lead. Furthermore, the report found that Defendant Beech-Nut used  
 24 ingredients containing as much as 886.9 ppb lead, and that Defendant Beech-Nut used many  
 25 ingredients with high lead content, including 483 that contained over 5 ppb lead, 89 that contained  
 26 over 15 ppb lead, and 57 that contained over 20 ppb lead. Additionally, Defendant Gerber used

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27 <sup>10</sup> Subcommittee Report at p. 4.

28 <sup>11</sup> *Id.* at 10.

<sup>12</sup> Agency for Toxic Substances and Disease Registry, ATSDR's Substance Prior List (2019), available at <http://www.atsdr.cdc.gov/spl/index.html#2019spl>.

1 ingredients that tested as high as 48 ppb lead, and used many ingredients containing over 20 ppb  
2 lead.

3 34. For comparison, the FDA has set the maximum level of lead in bottled water at  
4 5 ppb.<sup>13</sup>

5 35. Lead is the second most dangerous of the Toxic Heavy Metals discussed in  
6 the Subcommittee Report because lead can accumulate in the body, and even small doses of  
7 lead have deleterious effects on children, including health, behavioral, cognitive, and  
8 development issues. The FDA states that “[h]igh levels of lead exposure can seriously harm  
9 children’s health and development, specifically the brain and nervous system.”<sup>14</sup>

#### ***Cadmium in Defendant’s Baby Food***

10 36. Cadmium was another Toxic Heavy Metal found to be present in all brands of baby  
11 food subject to the House Subcommittee’s investigation.<sup>15</sup> In particular, Defendant Beech-Nut  
12 used 105 ingredients that tested over 20 ppb cadmium, with some testing much higher, up to  
13 344.55 ppb cadmium. Sixty-five percent of Defendant Nurture’s (HappyBABY) finished baby  
14 food products contained more than 5 ppb cadmium, while seventy-five percent of Gerber’s carrots  
15 contained cadmium in excess of 5 ppb, with some containing up to 87 ppb cadmium.

16 37. For comparison, the FDA has set the maximum level of cadmium in bottled water  
17 at 5 ppb.<sup>16</sup>

18 38. Cadmium is the seventh most dangerous heavy metal toxin according to the  
19 ATSDR. Exposure to cadmium is linked with decreases in IQ and development of Attention  
20 Deficit Hyperactive Disorder (“ADHD”). The EPA and FDA set the limit at 5 ppb of cadmium  
in drinking water and bottled water. The WHO limits cadmium in drinking water at 3 ppb.

#### ***Mercury in Defendant’s Baby Food***

22 39. Lastly, Mercury another Toxic Heavy Metal was found to be present in all brands  
23 of baby food subject to the House Subcommittee’s investigation. *See*, Subcommittee Report,  
24 p. 4. The report found that Defendant Nurture (HappyBABY) sold finished baby food products

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25  
26 13 Subcommittee Report at p. 4.

27 14 FDA, *Metals and Your Food*, available at: <https://www.fda.gov/food/chemicals-metals-pesticides-food/metals-and-your-food>.

28 15 Subcommittee Report at p. 3.

16 *Id.* at 4.

1 containing as much as 10 ppb mercury, Defendant Beech-Nut does not even test for mercury in  
 2 baby food, and Defendant Gerber rarely tests for mercury in its baby foods.

3 40. These numbers are outrageous given that in comparison, the U.S. Food and Drug  
 4 Administration (“FDA”) has set the maximum allowable levels in bottled water at 10 ppb  
 5 inorganic arsenic, 5 ppb lead and 5 ppb cadmium, and the U.S. Environmental Protection Agency  
 6 (“EPA”) has capped the allowable level of mercury in drinking water at 2 ppb. It is of importance  
 7 to note that these limits were created in reference to **adult** exposure, not infants, who are much  
 8 more vulnerable and susceptible to various illnesses.

9 ***Independent Data with Regards to Defendants Walmart, Plum and Sprout***

10 41. Walmart, Plum, and Sprout refused to cooperate with the Subcommittee’s  
 11 investigation, highly indicative of their wrongdoing, but nonetheless independent data confirms  
 12 that the baby food of these companies is similarly tainted, as the HBBF report observed that  
 13 Walmart’s Parent’s Choice brand products contain 66 ppb inorganic arsenic, 26.9 ppb lead, 26.  
 14 ppb cadmium, and 2.05 ppb mercury.<sup>17</sup>

15 42. Plum refused to produce its testing standards and specific testing results to the  
 16 Subcommittee.<sup>18</sup> In fact, it has hidden its policies and the actual level of toxic heavy metals in its  
 17 products and instead, provided the Subcommittee with a spreadsheet declaring that every one of  
 18 its products “meets criteria,” while declining to state what those criteria are.<sup>19</sup> It is troubling that  
 19 Plum admitted that for mercury, the company has *no* criterion whatsoever, stating: “No specific  
 20 threshold established because no high-risk ingredients are used.” Nonetheless, Plum still  
 21 marketed every food as “meets criteria” for mercury, which the Subcommittee noted was  
 22 “misleading” and “raises questions about what [Plum’s] other thresholds actually are, and whether

23  
 24  
 25  
 26 17 See HBBF Report at 21, 22, 25-27.

27 18 Subcommittee Report at p. 44.

28 19 Campbell, Product Heavy Metal Test Results (Dec. 11, 2019) (online at  
 http://oversight.house.gov/sites/democrats.oversight.house.gov/files/12.pdf).

1 they exist.”<sup>20</sup> In fact, HBBF’s independent testing has confirmed the presence of Toxic Heavy  
2 Metals in Plum’s baby food.<sup>21</sup>

3 43. While Sprout did not respond to the Subcommittee’s request at all, the independent  
4 testing conducted by HBBF confirmed that Sprout’s Baby Foods are similarly tainted by  
5 substantial amounts of Toxic Heavy Metals.<sup>22</sup>

6 ***Defendants’ Baby Food***

7 44. Defendants manufacture, distribute, advertise, market, and sell brands of baby  
8 food, and direct, control, and participate in the manufacturing and packaging of the baby food  
9 products that they sell. As part of that direction, control, and participation, Defendants determine  
10 and are responsible for the ingredients used in their baby food.

11 45. Defendants know and are responsible for the ingredients in their baby food  
12 products that they sell.

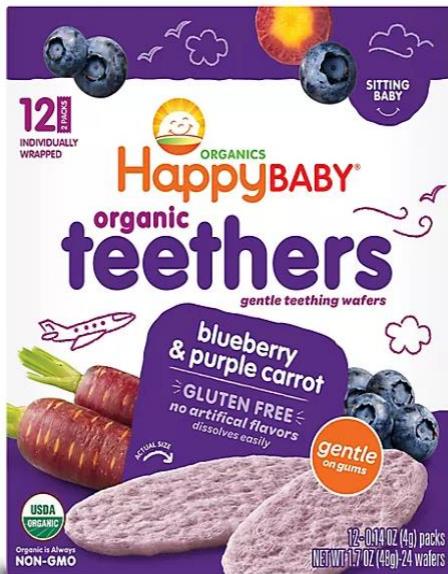
13 46. Defendants created, developed, reviewed, authorized, and are responsible for  
14 the textual and graphic content on the packaging of the baby food products that they sell. The  
15 labels on Defendants’ Baby Foods contain their standardized labels created, developed,  
16 reviewed, and authorized by Defendants. Defendants knew, created, developed, reviewed and  
17 are responsible for the representations contained on each package of baby food that they sell.

18 47. Defendants intended to induce reasonable consumers to rely on their marketing,  
19 all of which explicitly and implicitly convey that Defendants’ baby foods are healthy for  
20 consumption by babies. Such marketing include words written on the containers of Defendants’  
21 baby foods, including, but not limited to, the following words and phrases: “Organic,” “Naturals,”  
22 “Nothing Artificial Added,” “Organic Baby Food,” “Made with Real Ingredients,” “No Artificial  
23 Colors, Flavors or Preservatives,” “BPA-Free Packaging,” “Non-GMO” (which stands for  
24 “genetically modified organism” which are also associated with health risks), etc. Below are  
25 some examples:

26  
27 <sup>20</sup> Subcommittee Report at p. 45.

28 <sup>21</sup> HBBF Report at pp. 22-31.

<sup>22</sup> *Id.*



48. Plaintiffs justifiably relied on Defendants' marketing and suffered damages when they unknowingly purchased baby foods that contain toxic heavy metals and other undesirable toxins and contaminants. Additionally, the minor Plaintiffs were harmed or placed at risk of harm

1 by consuming foods containing Toxic Heavy Metals and other undesirable toxins and  
2 contaminants.

3 49. Defendants' false and misleading advertising deceives consumers into believing  
5 that they are purchasing and feeding their babies safe and nutritious baby foods, and through this  
6 deception, Defendants seek to induce consumers to purchase Defendants' baby food when they  
7 would have otherwise purchased alternative baby foods had they known that Defendants' baby  
8 foods contain toxic heavy metals such as arsenic, lead, cadmium and mercury, all of which have  
9 been proven to cause harm in infants and children.

10 ***Consumer Expectations Regarding Baby Food***

11 50. Parents' instinctive desire to protect and ensure the healthy development of their  
12 children is well-known. As such, the safety of baby food is of paramount importance, and is a  
13 material fact, to consumers (such as Plaintiffs and Class members).

14 51. More specifically, given the negative effects of Toxic Heavy Metals (such as  
15 arsenic, lead, cadmium, and mercury) on child development, the presence of these substances  
16 in baby food is a material fact to consumers (such as Plaintiffs and members of the Class). Indeed,  
17 consumers—such as Plaintiffs and members of the Class—are unwilling to purchase baby food  
18 that contains elevated levels of Toxic Heavy Metals.

19 52. Defendants know that the safety of their brands of baby food (as a general matter)  
20 is a material fact to consumers. This is exemplified by the fact that Defendants' baby food  
21 products are marketed and labeled as *lacking* certain substances (e.g., BPA, GMOs) that  
22 consumers believe would be deleterious to the health of children.

23 53. Defendants also know that consumers (such as Plaintiffs and members of the Class)  
24 are unwilling to purchase their baby food products that contain elevated levels of Toxic  
25 Heavy Metals.

26 54. As such, Defendants also know that the presence of Toxic Heavy Metals in their  
27 baby food products is a material fact to consumers (such as Plaintiffs and Class members).

28 55. Baby food manufacturers (such as Defendants) hold a special position of public  
trust. Consumers believe that they would not sell products that are unsafe to their infants.<sup>23</sup>

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<sup>23</sup> Subcommittee Report at p. 6.

1       56. Defendants knew that if the elevated levels of Toxic Heavy Metals in their baby  
2 food products was disclosed to Plaintiffs and Class members, then Plaintiffs and Class members  
3 would be unwilling to purchase Defendants' Baby Foods.

4       57. In light of Defendants' knowledge that Plaintiffs and Class members would be  
5 unwilling to purchase baby food if they knew that their baby food products contained elevated  
6 levels of Toxic Heavy Metals, Defendants intentionally and knowingly concealed these facts from  
7 Plaintiffs and Class members, and did not disclose the presence of these Toxic Heavy Metals on  
8 the labels of Defendants' baby food products.

9       58. Defendants knew that Plaintiffs and Class members would rely upon the  
10 representations and omissions contained on the packages of Defendants' baby food products, and  
11 intended for them to do so.

12       59. Defendants knew that in relying upon the representations and omissions  
13 contained on the packages of Defendants' baby food products, Plaintiffs and Class members  
14 would view those products as being safe for consumption, given their represented lack of certain  
15 substances (e.g., BPA, GMOs), and Defendants' concealment of the fact that baby food products  
16 contained elevated levels of Toxic Heavy Metals.

17       60. Prior to purchasing Defendants' baby food products, Plaintiffs and Class members  
18 were exposed to, saw, read, and understood Defendants' representations and omissions regarding  
19 the safety of their baby food products, and relied upon them.

20       61. As a result of Defendants' representations regarding the safety of its baby food, and  
21 the lack of certain deleterious substances (e.g., BPA, GMOs), and Defendants' concealment of  
22 the fact that their brands of baby food contained elevated levels of Toxic Heavy Metals,  
23 Plaintiffs and Class members reasonably believed that Defendants' baby food products were  
24 free from substances that would negatively affect children's development.

25       62. In reliance upon Defendants' representations and omissions, Plaintiffs and Class  
26 members purchased Defendants' baby food products.

27       63. Had Plaintiffs and Class members known the truth—*i.e.*, that Defendants' brand  
28 of baby food products contained elevated levels of Toxic Heavy Metals, rendering them unsafe  
for consumption by children—they would not have been willing to purchase these products at all.

29       64. Therefore, as a direct and proximate result of Defendants' misrepresentations  
30 and omissions concerning their baby food products, Plaintiffs and Class members purchased these

1 products and were harmed given that the presence of elevated levels of Toxic Heavy Metals in  
2 baby food renders it unsafe for human consumption, and are especially harmful to infants and  
3 children who are the most vulnerable in society.

4 65. Plaintiffs bring this action on behalf of themselves, and Classes of similarly  
5 situated individuals, seeking recovery of damages, including actual damages, enhanced,  
6 statutory, and punitive damages, as well as equitable relief, including restitution, disgorgement,  
7 and injunctive relief, reasonable attorneys' fees and costs, as allowed under the various causes of  
8 action set forth herein.

9 66. Plaintiffs are likely to consider purchasing baby food products in the future  
10 provided that Defendants institute corrective measures and cure their unfair and deceptive acts  
11 and practices. Should Defendants provide clear and non-misleading disclosures regarding the  
12 levels of Toxic Heavy Metals in their baby food products, improve their sourcing of  
13 ingredients and manufacturing processes, and accurately and effectively test final products of  
14 their baby food products for excessive levels of Toxic Heavy Metals, Plaintiffs would purchase  
15 baby food products from Defendants if they are truthfully labeled and do not contain excessive  
levels of Toxic Heavy Metals or other hazardous substances.

16 67. Additionally, Defendants are equitably estopped from asserting defenses  
17 relating to statutes of limitations. Not only did Defendants fail to disclose the elevated levels  
18 of Toxic Heavy Metals in their baby food products, but Defendants also touted their brands of  
19 baby food as wholesome, natural, specially prepared to meet nutritional and developmental needs  
20 of babies and children, and lacking certain undesired substances, such as BPA and GMOs, and  
21 including certain beneficial substances, such as iron. Defendants also omitted and concealed the  
22 facts regarding the presence of Toxic Heavy Metals from the FDA and Congress, and actively  
23 and fraudulently concealed and continue to conceal the true nature of the ingredients of their baby  
food products.

24 **CLASS ACTION ALLEGATIONS**

25 68. As further stated herein as to the following claims, Plaintiffs bring their causes of  
26 action on behalf of themselves and all others similarly situated, and certification of this class  
27 action is appropriate under California *Code of Civil Procedure* section 382 and California *Civil*  
28 *Code* section 1781, because the questions of law or fact common to the respective Class members  
predominate over questions of law or fact affecting only individual members.

1        The “Class” is defined as all persons or entities who, within the State of California, from  
2 September 2009 through December 2021 (the “Class Period”), who purchased and/or consumed  
3 the subject Baby Foods from Beech-Nut Nutrition Company, Nurture, Inc. (which sells baby  
4 foods under the brand name HappyBABY), Plum Inc. d.b.a. Plum Organics, Gerber Products  
5 Company, Walmart, Inc. (which sells Baby Foods under the brand name Parent’s Choice), and  
6 Sprout Foods, Inc., which contain high levels of toxic heavy metals including mercury, lead,  
7 arsenic and cadmium.

8        69.      Excluded from the Class are Defendants’ officers, employees, agents or affiliates,  
9 and any judge who presides over this action, as well as past and present employees, officers and  
10 directors of Defendants. Plaintiffs reserve the right to expand, limit, modify, or amend this Class  
11 definition, including the addition of one or more subclasses, in connection with their motion for  
12 class certification, or at any other time, based upon, *inter alia*, changing circumstances and/or new  
facts obtained during discovery.

13 **A.      Commonality**

14        70.      There are questions of law and fact that are common to the claims of Plaintiffs.  
15 Among these common questions are the following:

16                a. Whether Defendants violated California’s Unfair Competition Law by  
17 knowingly formulating, manufacturing, advertising, and selling baby foods touted as healthy,  
18 nutritious and safe for consumption when, in reality, the baby foods contain toxic heavy metals;

19                (b) Whether Defendants violated California’s Unfair Competition Law  
20 by misrepresenting material information to consumers regarding Defendants’ baby food products  
21 and their ability to be nutritious to a baby’s diet;

22                (c) Whether Defendants violated California’s Unfair Competition Law  
23 by concealing material information from consumers regarding the fact that the baby foods contain  
24 high levels of toxic heavy metals, so that consumers would not know that the baby foods pose a  
25 health risk to babies and their development;

26                (d) Whether Defendants violated California’s Unfair Competition Law  
27 by using uniform, deceptive business practices, such as telling consumers via their websites that  
28 the baby foods involved are safe to consume and have undergone thorough testing, without  
transparently disclosing Defendant’s testing standards and ultimate results;

1 (e) Whether Defendants represented and continue to represent that their  
2 baby foods are of a particular standard, quality, or grade when they are not;  
3 (f) Whether Defendants advertised their Baby Foods with the intent not to  
4 sell them as advertised;  
5 (g) Whether Defendants owed a duty of care to their customers to ensure  
6 that their baby foods do not contain any toxic heavy metals or other undesirable toxins or  
7 contaminants;  
8 (h) Whether Defendants owed a duty to investigate that their baby foods do  
9 not contain any toxic heavy metals or other undesirable toxins or contaminants; and  
10 (i) Whether Defendants' conduct as set forth above injured consumers, and if so,  
11 the extent of the injury.

**B. Numerosity**

12 (j) The members of the Class are so numerous that separate joinder of each  
13 member is impracticable. Plaintiffs are informed and believe that in the County of Los Angeles  
14 alone, the members of the Class would easily exceed the minimum numbers to satisfy this  
15 requirement.

**C. Typicality**

16 (k) Plaintiffs' claims are typical of the claims of the Class because  
17 Plaintiffs, like the other Class Members, purchased Defendants' baby foods based on the  
18 reasonable belief that they were healthy, nutritious, and safe for consumption by babies. Plaintiffs,  
19 as with other Class Members, were deceived by Defendants' misrepresentations and omissions  
20 of fact.

21 (l) The core issues which predominate over all the other issues in the  
22 litigation involve Defendants' unfair competition, violation of the CLRA and other violations, as  
23 discussed above.

24 (m) Upon information and belief, there has never been a prior lawsuit certified as  
25 a class on behalf of Plaintiffs based on the allegations in this Complaint.

**D. Adequacy of Representation**

26 (n) Plaintiffs will fairly and adequately protect the interests of the Class and  
27  
28

1 are committed to the vigorous prosecution of this action. They have retained competent counsel,  
2 experienced in litigation of this nature, to represent them and members of the Class. There is no  
3 hostility between Plaintiffs and the unnamed Class members. Plaintiffs anticipate no difficulty  
4 in the management of this litigation as a class action.

5 (o) To prosecute this case, Plaintiffs have chosen the law firm of Beverly  
Hills Trial Attorneys, P.C., whose attorneys have represented plaintiffs in class actions and as  
6 private attorneys general in bringing public interest actions.

7 **E. Superiority**

8 (p) The questions of law or fact common to the claims of Plaintiffs and of  
9 each Class member predominate over any questions of law or fact affecting only individual  
10 members of the Class. All claims by named Plaintiffs and unnamed Class members are based on  
11 the same alleged “across the board” representations by Defendants and other acts constituting  
12 negligence, unfair competition under the UCL, and violation of Consumer Legal Remedies Act.

13 (q) Common issues predominate when as here, liability can be determined  
14 on a class-wide basis, even when there are some individualized damages.

15 (r) As a result, when determining whether common questions predominate,  
16 courts focus on the liability issue and if the liability issue is common to the class as in the case at  
17 bar, common questions are held to predominate over individual questions.

18 (s) Since all claims by named Plaintiffs and unnamed Class members are  
19 based on the same alleged “across the board” failures by Defendants and other unfair competition  
under the UCL, the predominance requirement needed for class action treatment is satisfied.

20 (t) A class action is superior to thousands of individual actions in part  
21 because of the non-exhaustive factors listed below:

- 22 i. Joinder of all class members would create extreme hardship and  
23 inconvenience for the affected consumers because of their immense  
24 geographical dispersion.
- 25 ii. It is highly unlikely that individual Plaintiffs would shoulder the burden of  
26 this vast and complex litigation as many are simply too poor or uneducated  
27 about Defendants’ actions to bring separate actions;
- 28 iii. The interests of justice will be well served by resolving the common disputes  
of potential class members in one forum;

- iv. Individual suits would not be cost effective. The costs to individual Plaintiffs in a collective action are lowered through the pooling of resources and by limiting the controversy to one proceeding which efficiently resolves common issues of law and fact that arose from the same alleged activity; and
- v. The action is manageable as a class action; individual lawsuits are not economically maintainable as individual actions.

Defendants have also acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final declaratory relief with respect to the Class as a whole.

## **FIRST CAUSE OF ACTION**

### **(Fraudulent Concealment)**

71. Plaintiffs incorporate by reference each allegation set forth in preceding paragraphs as if fully stated herein.

72. Defendants had a duty to disclose material facts to Plaintiffs and the Class given their relationship as contracting parties and intended users of the Baby Foods. Defendants also had a duty to disclose material facts to Plaintiffs and the Class, namely that they were in fact manufacturing, distributing, and selling harmful Baby Food products unfit for human consumption, because Defendants had superior knowledge such that the transactions without this disclosure were rendered inherently unfair.

73. Defendants possessed knowledge of these material facts since at least October 2019, when Healthy Babies Bright Futures published a report investigation the presence of Toxic Heavy Metals in baby foods, and found that “puffs and other snacks made with rice flour,” “teething biscuits and rice rusks,” “infant rice cereal,” “apple, pear, grape, and other fruit juices,” and carrots and sweet potatoes” manufactured by the Defendants as particularly high in Toxic Heavy Metals.

74. During this time, Plaintiffs, and members of the Class, were purchasing and using the Defendants' Baby Food products without knowing they contained dangerous levels of Toxic Heavy Metals.

75. Defendants failed to discharge their duty to disclose these materials facts. In so failing to disclose these material facts to Plaintiffs and the Class, Defendants intended to conceal from Plaintiffs and the Class that Plaintiffs were purchasing and consuming Baby Food

1 products which contained harmful ingredients that are unfit for human use, and thus acted with  
2 scienter and/or an intent to defraud.

3 76. Plaintiffs and the Class reasonably relied on Defendants' failure to disclose material  
4 facts insofar as they would not have purchased these Baby Foods contained toxic heavy metals  
5 such as arsenic, lead, cadmium, and/or mercury, had they known the truth, but would rather have  
6 purchased baby foods manufactured by one of Defendants' competitors.

7 77. As a direct and proximate cause of Defendants' fraudulent concealment,  
8 Plaintiffs, and the Class, suffered damages and were injured. Furthermore, and as a result of  
9 Defendants' willful and malicious conduct, punitive damages are warranted.

10 **SECOND CAUSE OF ACTION**

11 **(Negligent Misrepresentation)**

12 78. Plaintiffs reallege and incorporate here by reference each of the foregoing  
13 paragraphs, and further allege as follows.

14 79. At all relevant times, Defendants designed, manufactured, packaged,  
15 labeled, marketed, advertised, promoted, supplied, distributed, sold and/or otherwise placed Baby  
16 Foods into the stream of commerce, and therefore owed a duty of reasonable care to avoid causing  
17 harm to those that consumed Baby Foods, such as Plaintiff.

18 80. Defendants were negligent, reckless, and careless and owed a duty to  
19 Plaintiff to make accurate and truthful representations regarding Baby Foods, Defendants  
20 breached their duty, thereby causing Plaintiff to suffer harm.

21 81. Defendants represented to Plaintiffs via advertising, their websites,  
22 packaging, promotions, as well as by other means, that their baby foods were both safe and  
23 nutritious, when in fact, the baby food contained unsafe levels of toxic heavy metals far in excess  
24 of regulatory standards. In fact, because of the presence of unsafe levels of toxic heavy metals in  
25 Defendants' baby foods, the products presented an unacceptable risk of causing  
26 neurodevelopmental disorders, such as ADHD, as well as other illnesses.

27 82. Additionally, Defendants represented to Plaintiffs that their baby foods were safe  
28 for their intended use, when in fact, Defendants knew or should have known that their products

were not safe for their intended purpose and should not have been consumed by babies. Defendants intended for Plaintiffs to rely on these representations and each of these misrepresentations were material at the time they were made. In particular, each of the misrepresentations concerned material facts that were essential to the analysis undertaken by Plaintiffs as to whether they should purchase or consume these Baby Foods.

83. Defendants knew or should have known that their representations were false and were negligently made without regard for their truth.

84. Plaintiffs reasonably placed their trust and reliance in Defendants' representations that its baby foods were as advertised, that is that they were healthy, nutritious and safe for consumption, and were harmed as described herein. Plaintiffs' reliance on Defendants' representation was a substantial factor in causing Plaintiffs' harms.

85. Furthermore, Defendants' acts and omissions as described herein were committed in reckless disregard of Plaintiffs' rights, interests, and well-being to enrich Defendants. Defendants have yet to correct these misrepresentations about their baby foods.

86. Plaintiffs and the members of the class were injured as a direct and proximate result of Defendants' negligent misrepresentations regarding their products, as described herein.

### **THIRD CAUSE OF ACTION**

**(Violation of *Business and Professions Code* sections 17200, *et seq.*)**

87. Plaintiffs reallege and incorporate here by reference each of the foregoing paragraphs, and further allege as follows.

88. Plaintiffs, pursuant to *Business and Professions Code* section 17204, bring this cause of action on behalf of themselves and as a private attorneys general.

89. *Business and Professions Code* section 17200, *et seq.*, also known as the Unfair Competition Law, defines “unfair business competition” to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. The Unfair Competition Law imposes strict liability. Plaintiffs need not prove that Defendants

1 intentionally or negligently engaged in unlawful, unfair or fraudulent business practices – but  
2 only that such practices occurred.

3 ***“Unlawful” Prong***

4 90. A business act or practice is “unlawful” under the UCL if it violates any  
5 other law or regulation.

6 91. As detailed in Plaintiffs’ Cause of Action below, the Consumer Legal  
7 Remedies Act, California *Civil Code* sections 1750 - 1784, prohibits a business from engaging in  
8 sales practices that are deceptive or misrepresentations when offering goods and services to the  
9 general public.

10 92. Defendants’ unlawful business practices are ongoing, and unless enjoined  
11 under *Business & Professions Code* section 17203, and/or under section 17535, are likely to  
12 continue to deceive other members of the general public at the expense of Defendants’  
13 competitors.

14 93. Defendants violated Cal. Bus. & Prof. Code sections 17200, *et seq.* by engaging  
15 in unlawful, unfair, or fraudulent business acts or practices and unfair, deceptive, untrue, or  
16 misleading advertising, including:

- 18 a. Knowingly formulating, manufacturing, advertising, and selling baby foods  
19 touted as healthy, nutritious and safe for consumption when, in reality, the baby  
20 foods contain toxic heavy metals;
- 21 b. Misrepresenting material information to consumers regarding Defendant’s  
22 baby food products and their ability to be nutritious to a baby’s diet;
- 23 c. Concealing material information from consumers regarding the fact that the  
24 baby foods contain high levels of toxic heavy metals, so that consumers would not  
25 know that the baby foods pose a health risk to babies and their development; and
- 26 d. Using uniform, deceptive business practices, such as telling consumers via their  
27 websites that the baby foods involved are safe to consume and have undergone  
28 thorough testing, without transparently disclosing Defendant’s testing standards  
and ultimate results.

1       ***“Unfair” Prong***

2       94.      A business act or practice is “unfair” under the UCL if it offends an  
 3      established public policy or is immoral, unethical, oppressive, unscrupulous or  
 4      substantially injurious to consumers, and that unfairness is determined by weighing the reasons,  
 5      justifications and motives of the practice against the gravity of the harm to the alleged victims.

6       95.      Defendants’ business practices are unfair under the UCL because  
 7      Defendants have acted in a manner that is immoral, unethical, oppressive, unscrupulous and/or  
 8      substantially injurious to Plaintiffs and the Class Members. These business practices include  
 9      failing to inform its customers about the true nature of their baby foods, and engaging in a pattern  
 10     or practice of concealing those facts and urging their customers to purchase more of their baby  
 11     foods based on the false belief that the foods remain safe to consume for babies, thereby depriving  
 12     consumers of sufficient information to make an informed decision when purchasing baby food.  
 13     Further, the impact of the practice against Plaintiffs and the Class Members far outweighs any  
 14     possible justification or motive on the part of Defendants. The impact on Plaintiffs and the Class  
 15     Members has been described. Defendants can have no possible justification for engaging in  
 16     immoral, unethical and substantially injurious act of overcharging Plaintiffs and the Class  
 17     Members through a misleading and deceptive conduct – selling baby foods that, in many  
 18     instances, puts children at risk for severe developmental and health problems. Furthermore,  
 19     Plaintiffs and the Class Members could not have reasonably avoided this injury because they  
 20     relied on Defendants’ advertising as to the quality and characteristics of the products being sold,  
 21     as all consumers who rely on the verity of product advertising must do. Defendants’ false  
 22     advertising is also violative of public policy, as expressed in the CLRA.

24       96.      Specifically, Plaintiffs’ parents and guardians paid hefty prices overtime for  
 25     Defendant’s baby food products, believing that they were the most healthy options for growing  
 26     children. Defendants have refused to admit that their products are indeed dangerous, and they  
 27     continue to market and sell their products in California. Defendants have engaged in this conduct  
 28

1 at the expense of their customers' rights as they could have easily informed their customers about  
2 the actual contents of their products, but did not do so.

3 97. The harm to Plaintiffs and Class members outweighs the utility of  
4 Defendants' practices. There were reasonably available alternatives to further Defendants'  
5 legitimate business interests other than the misleading and deceptive conduct described herein.

6 ***“Fraudulent” Prong***

7 98. A business act or practice is “fraudulent” under the UCL if it is likely to  
8 deceive members of the consuming public.

9 99. Defendants' acts and practices alleged above constitute fraudulent business  
10 acts or practices as they have deceived Plaintiffs into purchasing and consuming certain baby  
11 foods which contain high levels of high toxic metals, and are highly likely to deceive and have  
12 deceived members of the consuming public.

13 100. Defendants' business practices, as alleged herein, also constitute fraudulent  
14 conduct because Defendants did not deliver the products they advertised. Defendants'  
15 representations and omissions in California were material because they were likely to deceive  
16 reasonable consumers.

17 101. Plaintiffs and Class Members did not know that the baby foods contained  
18 toxic heavy metals. Accordingly, Defendants should not have omitted and/or misrepresented the  
19 facts surrounding the baby food's true contents.

20 102. Defendants omitted and misrepresented material information pertaining to  
21 its baby foods' true contents to defraud Plaintiffs by, among other things, convincing Plaintiffs  
22 and Class Members to purchase more of its products, and to otherwise ensure that Plaintiffs and  
23 Class Members would not discover Defendant's underlying fraud regarding its omissions and  
24 misrepresentations regarding the baby food products. As a result, Defendant violated Cal. Penal  
25 Code § 502.

26 103. Defendants' fraud led to consumers paying for products that they would

1 not have paid for if they knew the truth about the fact that these products contained toxic  
2 heavy metals.

3 104. As a direct and proximate result of Defendants' unfair, unlawful, and  
4 fraudulent acts and practices, Plaintiffs and Class Members were injured and lost money. They  
5 did not receive the benefit of the bargain in purchasing the baby foods, and they spent their own  
6 time and money dealing with purchasing safer baby food alternatives. Additionally, Plaintiffs  
7 were harmed or placed at risk of imminent harm by consuming foods containing toxic heavy  
8 metals and other undesirable toxins and contaminants.

9 105. Defendants acted intentionally, knowingly, and maliciously in violation of  
10 California's Unfair Competition Law.

11 106. Plaintiffs and Class Members seek all monetary and non-monetary relief  
12 allowed by law, including restitution of all profits stemming from Defendants' unfair, unlawful,  
13 and fraudulent business practices, declaratory relief, reasonable attorneys' fees and costs under  
14 California Code of Civil Procedure § 1021.5, injunctive relief, and other appropriate equitable  
15 relief.

16 107. In prosecuting this action for the enforcement of important rights affecting  
17 the public interest, Plaintiffs also seek, in addition to damages, restitution and other equitable  
18 relief, to recover attorney fees under (i) section 1021.5 of the *Code of Civil Procedure*, and/or (ii)  
19 the "common fund" doctrine available to prevailing Plaintiffs who confer a benefit on the general  
20 public.

22 **FOURTH CAUSE OF ACTION**

23 **(Violation of California *Civil Code* section 1750, *et seq.*)**

24 108. Plaintiffs reallege and incorporate here by reference each of the foregoing  
25 paragraphs, and further allege as follows.

26 109. Defendants are "persons" as defined by *Civil Code* section 1761(c).

27 110. Plaintiffs and each member of the Class are "consumers" within the meaning  
28 of *Civil Code* section 1761(d).

1       111. The Consumers Legal Remedies Act applies to Defendants' conduct  
2 because it extends to transactions that are intended to or result in the sale or lease of goods or  
3 services to consumers. In accordance with the liberal application and construction of the CLRA,  
4 application of the CLRA to all class members is appropriate, given that Defendants' conduct as  
5 described herein originated from California, and consumers purchased or used the involved baby  
6 foods in California.

7       112. Defendants violated and continue to violate the CLRA by engaging in the  
8 following practices prescribed by *Civil Code* section 1770(a) in transactions with the members of  
9 the Class which were intended to result in, and did result in, the sale of products to Plaintiffs and  
10 the Class Members in violation of Civil Code section 1770, including: a) representing that goods  
11 or services have characteristics and uses that they do not have; b) representing that goods or  
12 services are of a particular standard, quality, or grade when they are not; c) advertising goods or  
13 services with intent not to sell them as advertised; and d) representing that the subject of a  
14 transaction has been supplied in accordance with a previous representation when it has not.

15       113. Defendants' representations and omissions were material because they were  
16 likely to deceive reasonable consumers.

17       114. Had Defendants disclosed to Plaintiffs and Class Members that its baby  
18 foods contained toxic heavy metals, often times in amounts surpassing those recommended or  
19 deemed safe by multiple regulatory bodies, Plaintiffs and the Class Members would have made  
20 different purchasing decisions.

21       115. Had Defendants disclosed the truth, they would have been unable to  
22 continue in the same course of business. As such, Defendants represented that its baby foods  
23 were healthy, nutritious and safe for consumption by babies, who have been shown to be  
24 extremely susceptible to the harsh effects of exposure to toxic heavy metals. Plaintiffs and the  
25 Class Members acted reasonably in relying on Defendants' misrepresentations and omissions, the  
26 truth of which they could not have discovered.

27       116. As a direct and proximate result of Defendants' violations of California  
28

1 Civil Code § 1770, Plaintiffs and Class Members have suffered and will continue to suffer injury,  
2 ascertainable losses of money or property, and monetary and non-monetary damages. Such  
3 monetary and non-monetary damages have arisen from not receiving the benefit of the bargain in  
4 purchasing Defendants' baby foods, and increased time and expense in having to purchase safer  
5 alternatives and to determine whether Plaintiffs have been negatively affected by consuming  
6 Defendants' baby foods.

7 117. Pursuant to *Civil Code* section 1782(d), the Class seeks a court order  
8 enjoining the above-described wrongful acts and practices of Defendants.

9 118. Pursuant to *Civil Code* section 1782, Plaintiffs notified Defendants in  
10 writing by certified mail of the particular violations of Civil Code section 1770 and the other  
11 violations as alleged herein and demanded that Defendants rectify the problems associated with  
12 the actions detailed above and give notice to all affected consumers of its intent to so act.

13 **FIFTH CAUSE OF ACTION**

14 **(Unjust Enrichment)**

15 119. Plaintiffs reallege and incorporate here by reference each of the foregoing  
16 paragraphs, and further allege as follows.

17 120. Plaintiffs and Class Members were enticed to purchase Defendants' Baby Foods,  
18 which were not as Defendants represented them to be.

19 121. Had Plaintiffs and the Class known of the fact that the Baby Foods contained toxic  
20 heavy metals such as arsenic, lead, cadmium, and/or mercury, they would not have purchased  
21 Defendants' Baby Food, but would rather purchase baby foods manufactured by one of  
22 Defendants' competitors.

23 122. Accordingly, Plaintiffs and Class Members were damaged, and Defendants were  
24 unjustly enriched, given that they defrauded Plaintiffs into purchasing said baby food products by  
25 not disclosing the fact that these products contained heavily toxic material.

123. Furthermore, Defendants' conduct was willful, intentionally deceptive, and intended to cause economic injury to Plaintiffs and the Class. Defendants are therefore liable to pay punitive damages.

124. Plaintiffs and Class Members are entitled to damages in the amount Defendant was unjustly enriched, to be determined at trial.

## PRAYER FOR RELIEF

125. Plaintiffs STACIA CULLORS, an individual, L.P., a minor, N.B., a minor, and V.B., a minor, through their guardian ad litem STACIA CULLORS, ANTHONY BACANI, an individual, D.B., a minor, and E.B., a minor, through their guardian ad litem ANTHONY BACANI, JENNIFER CULLORS, an individual, as well as A.C., a minor, and J.C., a minor through their guardian ad litem JENNIFER CULLORS, and on behalf of all others similarly situated pray for relief and judgment against Defendants as follows:

(a) An order certifying the Class and designating STACIA CULLORS, an individual, L.P., a minor, N.B., a minor, and V.B., a minor, through their guardian ad litem STACIA CULLORS, ANTHONY BACANI, an individual, D.B., a minor, and E.B., a minor, through their guardian ad litem ANTHONY BACANI, JENNIFER CULLORS, an individual, as well as A.C., a minor, and J.C., a minor through their guardian ad litem JENNIFER CULLORS as Class Representatives and their counsel as Class Counsel;

(b) Awarding Plaintiffs and the proposed Class members actual or compensatory damages according to proof;

(c) Awarding restitution and disgorgement of all profits and unjust enrichment that Defendants obtained from Plaintiffs and the Class members as a result of their unlawful, unfair and fraudulent business practices described herein;

(d) Awarding declaratory and injunctive relief as permitting by law or equity to individual Plaintiffs, including enjoining Defendants from continuing the unlawful practices set forth herein, and directing Defendants to identify, with Court supervision, victims of their misconduct and pay them all money they are required to pay;

- (e) Exemplary and punitive damages sufficient to punish and deter the defendants and others from future wrongful practices;
- (f) Pre-judgment and post-judgment interest;
- (g) Awarding attorneys' fees and costs; and
- (h) Providing such further relief as may be just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury of all issues raised in this Complaint.

DATED: April 15, 2022

## BEVERLY HILLS TRIAL ATTORNEYS, P.C.

/s/ Azar Mouzari  
Azar Mouzari, Esq.  
Nilofar Nouri, Esq.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2022, I filed the foregoing **SECOND AMENDED COMPLAINT FOR DAMAGES** and this **Certificate of Service** electronically through the CM/ECF system, which will send notice of filing to all CM/ECF participants.

Dated: April 15, 2022

## BEVERLY HILLS TRIAL ATTORNEYS.

P.C.

/s/ Nilofar Nouri

Nilofar Nouri, Esq.

Attorney for Plaintiffs